85-2111

No.

Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1985

ROBERT H. TEEPLE
Petitioner

vs.

JOHN T. PATTON, et al.
Respondents

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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QUESTIONS PRESENTED

1. Whether the position of this Court as to the meaning of "jurisdiction" in "non-judicial immunity" cases is in direct conflict with this Court's position in "judicial immunity" cases?

2. Whether Judge Stump (the figurative rapist in Stump v. Sparkman) should be the role-model image established by this Court as the standard for all jurists?

3. Whether a court loses jurisdiction when its jurisdiction is challenged as a condition precedent to activating its jurisdiction?

4. Whether the qualified immunity standard established by this Court in Harlow v. Fitzgerald and Mitchell v. Forsythe should be the same standard applied to judges who act contrary to clearly established statutory and/or case law depriving them of jurisdiction?

PARTIES

The plaintiff-appellant in the proceeding in the Court of Appeals was Robert H. Teeple. The defendants-appellees were Judges John T. Patton and Saul G. Stillman, judges of the Court of Appeals, of Cuyahoga County, Ohio.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceedings Below ii

Index of Authorities v

Opinions Below 1

Jurisdictional Statement 2

Constitutional and Statutory Provisions 2

Statement of the Case 3

Reasons for Granting the Writ 6

I. The position of this Court as to the meaning of "jurisdiction" in "non-judicial immunity" cases is in direct conflict with this Court's position in "judicial immunity" cases 6

II. The Court of Appeals decision avoids the position of this Court as to when judicial immunity is lost. 11

III. Judge Stump (a figurative rapist) should not be the role-model image deemed by this Court as the standard for all jurists. 12

IV. When the jurisdiction of a court

of limited jurisdiction is challenged by a litigant at the outset and the court fails to determine whether it does or does not have jurisdiction as a condition precedent to acting, any subsequent action by that court constitutes the performance of a non-judicial act which is coram non judice. 13

V. Qualified immunity is more appropriate than absolute immunity when jurists act contrary to established state statutory and/or case law depriving them of the power to act. 16

Conclusion 22

Appendix:

Decision of the United States Court of Appeals for the Sixth Circuit (April 7, 1986) A1

Order and Memorandum of the United States District Court (Feb. 27, 1985) A9

INDEX OF AUTHORITIES

CASES

Andes v. Ely, 158 U.S. 312 (1894 14

Bradley v. Fisher, 13 Wall. 335, 80 U.S. 335 (1872) 10

Cuyahoga Board of Mental Retardation v. Ass'n of Teachers, 47 Ohio App.2d 28 (1975) 15

Dykes v. Hosemann, 743 F.2d 1448 (C.A.11,1984) 14

Giachetti v. Holmes, 14 Ohio App.3d 306 (1984) 15

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 16

In re Application of Blue Cross, 60 Ohio App.2d 245 (1978) 11

In re Dellenbaugh and Burke, 17 Ohio C.C. 106 (1899) 15

In re Lauderbach, 63 Ohio App.2d 157 (1978) 11

Katz v. Dept. of Liquor Control, 166 Ohio St. 229 (1957) 11

King v. Love, 766 F.2d 962 (C.A.6,1985) 8,12

Logan v. Zimmerman Brush Co., et al., 456 U.S. 422 (1982) 15

Malley v. Briggs, ___U.S.___, 54 U.S.L.W. 4243 (1986) 19

Mitchell v. Forsythe, ___U.S.___, 105 S.Ct. 2806 (1985) 16

Pierson v. Ray, 386 U.S. 547 (1967) 10,15

Randall v. Brigham, 7 Wall. 523, 74 U.S. 523 (1866) 10

Rankin v. Howard, 633 F.2d 844 (CA,9,1980) Cert den'd 451 U.S. 939 (1980) 14

Rosemam v. Reminderville, 14 Ohio App.3d 124 (1984) 15

Schorle v. City of Greenhills, 524 F. Supp. 821 (SD,Ohio,WD,1981) 14

State ex. rel. Bechtel v. McCabe, 60 Ohio App. 233 (1938) 14

Stump v. Sparkman, 435 U.S. 349 (1978) 10

Voorhees v. The Bank of The United States, (10 Peters) 35 U.S. 449 (1836) 9

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, U.S. Constitution 15

Article I, §3, Ohio Constitution 4

STATUTES AND RULES

Ohio Revised Code §119.12 4

Rule 54(b), Fed. Rules of Civil Procedure 6

NO.

Supreme Court of the United States

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ROBERT H. TEEPLE

Petitioner

- vs -

JOHN T. PATTON, et al.

Respondents

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Robert Teeple petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered on April 7, 1986, in Case No. 85-3262, approving a decision and order of the United States District Court for the Northern District of Ohio

OPINIONS BELOW

The decision and opinion of the court of appeals entered on April 7, 1986, appears in the appendix to this petition. The February

27, 1985 Memorandum and Order of the district court also appears in the appendix.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to §1254(1). The opinion below was entered on April 7, 1986.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the Constitution states, in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law...

2. Article IV, §3 of the Ohio Constitution says in pertinent part:

> (2) Courts of appeals shall have such jurisdiction as may be provided by law.. to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals...

3. Ohio Rev. Code §119.12 states, in pertinent part:

> Within thirty days after receipt of

> notice of appeal from an order in any case wherein a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed shall, upon motion, cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days, when it is shwon that the agency has made substantial effort to comply.
> * * * * * * *
> The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the party or the agency and shall proceed as in the case of appeals in civil actions in sections 2505.01 to 2505.45 of the Revised Code. Such appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, ...

STATEMENT OF THE CASE

Teeple's real estate license was cancelled by the Superintendent of the Ohio Division of Real Estate without cause or hearing. Teeple appealed to the Ohio Real Estate Commission (Commission) unsuccessfully, and then appealed to the Court of Common Pleas of Cuyahoga County, Ohio by virtue of Ohio Rev.

Code §119.12 (R.C. §119.12). When the Commission failed to file the record within 30 days as mandated by R.C. §119.12, Teeple moved for judgment in his favor. The Common Pleas judge then made a factual finding as to the non-filing of the record within 30 days, and ordered Teeple's license reinstated as he was obliged to do by R.C. §119.12.

Despite substantial case law prohibiting an appeal on "questions of fact" by an agency (as ditinguished from "questions of law" appeals as set forth in R.C. §119.12) and the statutory limitation of R.C. §119.12 on appeals of agencies, the Commission (represented by the Attorney General of Ohio who knew of this case law as he had been involved in each of the cases) took an appeal to the Court of Appeals of Cuyahoga County, Ohio (which is a court of limited jurisdiction by virtue of Article I, §3 of the Ohio Constitution and derived its jurisdiction from R.C. §119.12 only) on a "question of fact." Prior

to hearing in the Court of Appeals, Teeple filed two motions to dismiss the appeal for want of jurisdiction, and argued on oral hearing that the court had no jurisdiction to entertain the appeal - all of which went unanswered. The Court of Appeals panel (on which Judges Patton and Stillman sat) split 2-1, and reversed and remanded although Judge Patton had personally ruled in two previously cited cases to the panel that failure of an agency to file the record within the mandated 30 days was fatal to the agency's appeal. Teeple then filed a motion for reconsideration arguing that they had never ruled on his three challenges to their jurisdiction, whereupon Judges Patton and Stillman subsequently overruled Teeple's three challenges to their jurisdiction without opinion. An appeal to the Ohio Supreme Court was denied.

Teeple then filed a §1983 action in the United States District Court for the Northern District of Ohio against Judges Patton and

Stillman, the Superintendent, and the Commission members. The District Court dismissed Judges Patton and Stillman on the basis of judicial immunity utilizing Rule 54(b) of the Federal Rules of Civil Procedure, and retained the action as to the other defendants.

Teeple's appeal to the United States Court of Appeals for the Sixth Circuit was fruitless - however, no mention was made in their Opinion that there was substantial case law that was known by Judges Patton and Stillman that deprived them of jurisdiction.

REASONS FOR GRANTING THE WRIT

I. THE POSITION OF THIS COURT AS TO THE MEANING OF "JURISDICTION" IN "NON-JUDICIAL IMMUNITY" CASES IS IN DIRECT CONFLICT WITH THIS COURT'S POSITION IN "JUDICIAL IMMUNITY" CASES.

It had been one of those days when there seemed to be more things to be done than time allowed, but everything had been accomplished and now Bob and I relaxed prior to calling it

a day by "shooting the breeze" and brainstorming together.

> Picture this, Bob. A defendant comes before a judge of a court of limited jurisdiction charged with doing 35 m.p.h. in a 25 m.p.h. zone. "How do you plead?" asks the judge. "Guilty, your honor." replies the defendant. With that, the judge raises a .357 magnum revolver from beneath the bench and blows the defendant away. You know something, Bob, the law can't touch him under the judicial immunity doctrine. He had jurisdiction and was performing a judicial act - even if it was in excess of his jurisdiction.
>
> "Wait a minute, you can't murder someone and get away with it. Remember Judge Steele out in Euclid, Ohio. He was convicted for murdering his wife."
>
> Yea, but he hired someone to come into his home and kill her. His big mistake was not killing her from the bench!
>
> "Well, what about Judge Barbuto who sat on the Common Pleas Court of Summit County, Ohio? They nailed him when some of the good-looking women who came before him squealed that he gave them special consideration if they performed fellatio on him in chambers after their guilty pleas and before sentencing."
>
> His defense lawyer made a big mistake. He should have raised the defense of judicial immunity. After all, a judge does have judicial discretion as to the severity of a sentence based upon the character of the defendant.

> "Well then, there was Judge McGettrick here in our county, but I guess he doesn't count, 'cause they got him for taking a bribe in a bar while he was drunk. I really never thought that was fair: If you're going to bribe a judge, there should be a rule that you can only bribe him when he's sober. And then there was Judge "The Magician" Mosely in East Cleveland, Ohio who mysteriously made $130.000.00 dissapear from court receipts."

More conversation followed, but by the time we said good-night to each other we were both absolutely convinced that our hypothetical judge couldn't be touched by the present status of the law on judicial immunity, that he would be back on the bench after the trial, and that he would probably get re-elected since he had the right political name and the public doesn't know or care anything about the people they vote for to judge them.

What sparked our conversation was the Sixth Circuit Court of Appeals decision in King v. Love, 766 F.2d 962 (1985) which we had appended to our Brief in that court. In that case, Judge Love knowingly put a man in

jail for three days even though he knew he was limited to fining him $10.00. The Sixth Circuit said that was O.K.! The point is: If Judge Love can unjustifiably deprive someone of their "liberty," and Judge Patton can unjustifiably deprive Teeple of his "property," then it naturally follows that our hypothetical judge can justifiably deprive someone of their "life."

The position of this Court as to the meaning of "jurisdiction" in non-judicial immunity cases was clearly stated in Voorhees v. The Bank of the United States, (10 Peters) 35 U.S. 449,474 (1836):

> If not warranted by the constitution or law of the land, our most solemn proceedings can confer no right which is denied to any judicial act under color of law, which can properly be deemed to have been done coram non judice; that is, by persons assuming the judicial function in the given case without lawful authority. The line which separates error in judgment from the usurpation of power is very definite; and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally, when it is offered

> in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper: **there can be no middle character assigned to judicial proceedings which are irreversible for error.** (Emphasis)

In essence then, it is a black or white situation with no gray areas in between in non-judicial immunity cases.

To the contrary, however, in judicial immunity cases starting with Randall v. Brigham, 7 Wall. 523, 74 U.S. 523 in 1868, to Bradley v. Fisher, 13 Wall. 335, 80 U.S. 335 (1872), through Pierson v. Ray, 386 U.S. 547 (1967), and finally to Stump v. Sparkman, 435 U.S. 349 (1978), there have been so many shades of gray jurisdiction created by lower appellate courts that if a haberdasher were to stock suits in all those gray shades, he would have no room left for other inventory.

II. THE COURT OF APPEALS DECISION AVOIDS THE POSITION OF THIS COURT AS TO WHEN JUDICIAL IMMUNITY IS LOST.

The Court of Appeals decision is silent as to the case law cited to them and to Judges Patton and Stillman that deprived the state appellate judges of jurisdiction. In Stump, it was held that case law can deprive a court of jurisdiction. Teeple cited abundant case law depriving the state appellate court from entertaining jrisdiction, including In re Application of Blue Cross, 60 Ohio App.2d 245 (1978) wherein the court dismissed the agency appeal sua sponte for want of jurisdiction. Also cited were In re Lauderbach, 63 Ohio App.2d 157 (1978) and Katz v. Dept. of Liquor Control, 166 Ohio St. 229 (1957) to the same effect. Corruption is not limited to bribery; it can also take the subtle form of favoritism, cronyism or political influence.

III. JUDGE STUMP (A FIGURATIVE RAPIST) SHOULD NOT BE THE ROLE-MODEL IMAGE DEEMED BY THIS COURT AS THE STANDARD FOR ALL JURISTS.

Judge Stump invaded and violated a young woman's body without her permission. That is rape irrespective of what orifice was penetrated, and has stood as this Court's example of what judicial morality should be since 1978.

The judicial branch of our government, which was intended to be an exclusive club for only those of the highest principles, integrity, and character, has now become (by virtue of the current status of judicial immunity) the sanctuary for the corrupt, the haven for the unscrupulous, and the hiding place for the incompetent members of the judiciary.

The Court of Appeals should not have been obliged to render decisions such as the one in this case and King v. Love, supra, that read like an indulgent, patronizing

parent making excuses for an undisciplined, delinquent child that has hurt an innocent person.

As Groucho Marx once said: "I wouldn't want to belong to any club that would accept me as a member."

IV. WHEN THE JURISDICTION OF A COURT OF LIMITED JURISDICTION IS CHALLENGED BY A LITIGANT AT THE OUTSET AND THE COURT FAILS TO DETERMINE WHETHER IT DOES OR DOES NOT HAVE JURISDICTION AS A CONDITION PRECEDENT TO ACTING, ANY SUBSEQUENT ACTION BY THAT COURT CONSTITUTES THE PERFORMANCE OF A NON-JUDICIAL ACT WHICH IS CORAM NON JUDICE.

There is no question but that this Petition will not be entertained if it is not filed within the required 90 days: A "condition precedent" to activating this Court's jurisdiction. If the 90 day proviso was challenged by the Respondents on the basis that the Petitioner had not complied; this Court would, undoubtedly, determine that

question first. The need to comply with conditions precedent that activate jurisdiction was recognized long ago by this Court:

> The condition upon which action by the county judge could legally be had did not exist. He, therefore, never acquired any jurisdiction, and his judgment was coram non judice.
> Andes v. Ely, 158 U.S. 312,318 (1894)

Also see Dykes v. Hosemann, 743 F.2d 1448, 1497 (C.A.11,1984); Rankin v. Howard, 633 F.ed 844,849 (C.A.9,1980), cert denied 451 U.S. 939 (1980) and Schorle v. City of Greenhills, 524 F. Supp. 821,828 (S.D.,Ohio,W.D., 1981).

The position of the state of Ohio is the same:

> For example, in a divorce case in Common Pleas Court the question may be made that the plaintiff has not been a resident of the state one year before the filing of the action. The court must then decide that question first. If residence for one year has not been established, the court has no jurisdiction to hear the case. If the necessary statutory requirement as to residence is established, then the court has jurisdiction.
> State, ex rel. Bechtel v. McCabe, 60 Ohio App. 233, 238 (1938)

Also see In re Dellenbaugh and Burke, 17 Ohio C.C. 106,113 (Cuyahoga County,1899); Cuyahoga Bd. of Mental Retardation v. Ass'n of Teachers, 47 Ohio App.2d 28 (Cuyahoga County,1975); Roseman v. Reminderville, 14 Ohio App.3d 124 (Summit County,1984) and Giachetti v. Holmes, 14 Ohio App.3d 306 (Cuyahoga County,1984).

A cause of action is a property right protected by the Due Process Clause of the Fourteenth Amendment. Logan v. Zimmerman Brush Co., et al., 455 U.S. 426 (1982). When Judges Patton and Stillman took away Teeple's property without addressing the question of their jurisdiction, they knowingly deprived Teeple of a right to make a living as a real estate salesman.

> When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion of individual judgment; he acts no longer as a judge, but as a minister of his own prejudices.
> Pierson v. Ray, supra p. 567.

As such, Judges Patton and Stillman are not entitled to judicial immunity for three

reasons: There was statutory and case law denying them jurisdiction, and they never determined their jurisdiction as a condition precedent to entertaining jurisdiction.

V. QUALIFIED IMMUNITY IS MORE APPROPRIATE THAN ABSOLUTE IMMUNITY WHEN JURISTS ACT CONTRARY TO ESTABLISHED STATE STATUTORY AND/OR CASE LAW DEPRIVING THEM OF THE POWER TO ACT.

The qualified immunity standards established by this Court in Harlow v. Fitzgerald, 457 U.S. 800 (1982) and Mitchell v. Forsythe, ___U.S.___, 105 S.Ct. 2806,2811 (1985) should be used in instances where a judge acts contrary to clearly established state statutory and/or case law depriving him of jurisidiction. Such a standard would still protect the honest, competent judge and attract a higher calibre of lawyer to the bench.

In the Declaration of Independence, Thomas Jefferson wrote about "[t]he laws of nature...," which is something far more

expansive than "divine law" - as it embraces the balance of the universe. Nature does not tolerate "excesses," as they disturb the balance of nature and are miraculously controlled and regulated. As Buckminster Fuller said:

> Nature has...some sort of arithmetical geometrical coordinate system....It strikes me that nature's system must be a real beauty, because in chemistry we find that the associations are always in beautiful whole numbers - there are no fractions.

In other words, nature does not tolerate "excesses" or gray areas.

So too, in our society, "excesses" are not permitted. Two martinis and you are a sober driver; three martinis and you are a drunk driver. Drive in excess of the speed limit and you violate the laws of our society.

It is only in the unique area of judicial action that "excesses" are condoned and excused. Nay, encouraged!

In our athletic games, as well as in the game of life, there are "judgment calls" and

"rule violations." Was it a strike or ball? Was the pass receiver's foot in or out of the playing field when he caught the pass? These are "judgment calls," and even though instant replay (an appeal) might indicate that the call was wrong; it stands in athletic games, whereas it can be reversed on appeal in judicial contests. To the contrary, however, rule violations can cause penalties or forfeiture of the game in athletic contests, whereas the rules of a judicial contest (statutory and/or case law) can be ignored with impunity.

It has been said that a judge must be allowed to engage in "[p]principled and fearless decision-making," and be "[f]ree to act upon his own convictions" without intimidation. How police officers would like to have such latitude in making a decision with the barrel of a gun stuck up their nose as contrasted with judges who only have sheets of paper thrown at them.

If law enforcement officials, who usually only have primary educations, are expected to know the difference between right and wrong; abide by the standards set by this Court, and judge their actions accordingly at risk of personal liability, Pierson v. Ray, supra, - then we should expect and be entitled to no less of a standard from higher educated and supposedly principled members of our social structure who are incidentally members of the judiciary.

This coddling, this indulgence, this subterfuge, this charade only increases the boldness of the wayward few in our judicial system who are unwilling to play by the rules of the game.

In Malley v. Briggs, ___U.S.___, 54 U.S.L.W. 4243 (1986), this Court held that a police officer is only entitled to qualified, rather than absolute, immunity in applying to a magistrate for the issuance of an arrest warrant, and that the standards of Harlow v.

Fitzgerald, supra, were applicable.

The police officers involved therein had argued that the administration of justice would be hindered by a qualified immunity standard, since police officers would be reluctant to apply for arrest warrants.

This Court, at page 4245 of Malley, disagreed; held that the use of qualified immunity would benefit, not hinder, the administration of justice since police officers would first determine whether or not there was a reasonable basis for the issuance of an arrest warrant prior to the application therefor.

Likewise, the use of a qualified immunity standard for judges who act contrary to clearly established statutory and/or case law depriving them of the authority to act would also benefit, rather than hinder, the administration of justice, since judges would be required to determine if there was a reasonable basis for them to act. Stump only

encourages isolated lawlessness by the judiciary: What is needed is a deterrent to the unregulated sporadic lawlessness of the judiciary.

CONCLUSION

The judicial standards set by this Court in Stump v. Spoarkman, supra, do not work, nor are they calculated to work for the benefit of our society, the upgrading of the judiciary, and public respect for our judicial system.

This petition should be accepted for the purpose of re-examining the wisdom of Stump in light of the negative effects that have followed that decision.

Respectfully submitted,

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APPENDIX

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Decided and Filed April 7, 1986)

No. 85-3262

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ROBERT H. TEEPLE

Plaintiff-Appellant

- vs -

JOHN T. PATTON, et al.

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: MILBURN and RYAN, Circuit Judges; and BROWN, Senior Circuit Judge.

PER CURIAM. Plaintiff-appellant Robert H. Teeple appeals the district court's grant of summary judgment in favor of defendants-appellees Judges John T. Patton and Saul G.

Stillman in this action alleging violations of 42 U.S.C. § 1983. The district court held that defendants were entitled to absolute judicial immunity. For the reasons that follow, we affirm. I.

Plaintiff was a licensed real estate salesman in the state of Ohio. Pursuant to Ohio Rev. Code § 4735.13(B), plaintiff's license was in the possession of the real estate broker with whom plaintiff was associated. Upon termination of the broker-salesman relationship, the broker, in accordance with Ohio Rev. Code § 4735.13(B), returned plaintiff's license to the Superintendent of the Ohio Division of Real Estate for cancellation. The broker did not, however, notify plaintiff of the cancellation of the license.

Upon discovery that his license had been cancelled, plaintiff requested the superintendent to reinstate his license. The superintendent refused, and plaintiff, pursuant to

Ohio Rev. Code § 4735.03(B), appealed to the Ohio Real Estate Commission. Following an informal hearing, the Commission denied reinstatement of plaintiff's license.

Plaintiff then filed an appeal, pursuant to Ohio Rev. Code § 119.12, with the Court of Common Pleas for Cuyahoga County. Ohio Rev. Code § 119.12 requires an administrative agency to prepare and certify a transcript of its proceedings within thirty days of the filing of an appeal. More than thirty days after filing the appeal, plaintiff moved for judgment in his favor on the ground that the Commission had failed to timely certify a copy of the record of the proceedings to the Court of Common Pleas. The Commission contended that the record had been timely certified and filed but apparently due to a clerical mistake in the clerk's office had not been docketed or placed in the proper file. The Court of Common Pleas, finding that the filing was not recorded on the

court's docket, entered judgment in favor of plaintiff.

The Commission appealed that decision to the Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio. Judges Patton and Stillman were two of three appellate court judges on the panel assigned to hear and determine the Commission's appeal. Plaintiff moved to dismiss the appeal contending that Ohio Rev. Code § 119.12 limits the right of appeal by administrative agencies to county courts of appeal to only those questions concerning "the constitutionality, construction or interpretation of statutes and rules of the agencies." Plaintiff asserted that the Commission's appeal involved only a "factual question" with respect to whether or not the record had been timely certified. The Court of Appeals overruled plaintiff's motion and reversed. Judge Patton, writing for the court, stated:

The evidence in this case is uncontro-

> verted. It is clear that the Commission did timely prepare and certify to the court the record in this case..... Revised Code 119.12 does not specify the Commission must file the record but that it must certify it.
>
> Accordingly, the Commission's assertion that the trial court erred in its interpretation of R.C. 119.12 is well taken.

Judge Stillman joined in the decision of Judge Patton; however, Judge Pryatel dissented. Plaintiff's motion for reconsideration was overruled and his appeal to the Supreme Court of Ohio dismissed.

Plaintiff then commenced this action in the district court against several defendants, including Judges Stillman and Patton. Plaintiff alleged that the actions of Judges Patton and Stillman violated his civil rights and asked for monetary damages. The district court entered summary judgment in favor of Judges Patton and Stillman on the grounds of judicial immunity. Pursuant to Fed. R. Civ. P. 54(b), the district court directed entry of a final judgment in favor of these two

defendants.

II.

A judge defending against a section 1983 action is entitled to absolute immunity from damages and liability for acts performed in his judicial capacity. Dennis v. Sparks, 449 U.S. 24, 27 (1980); Stump v. Sparkman, 435 U.S. 349, 360 (1978). In order for judicial immunity to apply, the judge must have subject matter jurisdiction over the question. Stump, 435 U.S. at 355; Sevier v. Turner, 742 F.2d 262, 271 (6th Cir. 1984). Plaintiff contends that because the Commission's appeal involved a factual issue, the Ohio appellate court did not have subject matter jurisdiction, and, therefore, defendants were not entitled to judicial immunity. However, there is a distinction between acts done in the excess of jurisdiction, in which case judicial immunity still applies, and acts done in the complete absence of subject matter jurisdiction, in which case a judge may

be deprived of judicial immunity. Stump, 435 U.S. at 356-57; Sevier, 742 F.2d at 271. Subject matter jurisdiction must be broadly construed where the issue is a judge's immunity.

In the present case, plaintiff concedes that the Ohio appellate court had jurisdiction, pursuant to Ohio Rev. Code § 119.12, to entertain appeals by administrative agencies involving construction or interpretation of statutes or regulations. The Commission's appeal required the Ohio appellate court to decide whether Ohio Rev. Code § 119.12 required state administrative agencies to "file" a record of the administrative proceeding with the clerk. It is, therefore, apparent that the Ohio appellate court acted within the scope of its sunject matter jurisdiction.

Assuming, for the purposes of this appeal, that plaintiff's construction of Ohio law is correct, the worst that can be said of

Judges Patton and Stillman is that they misconstrued their authority in a type of case they normally have jurisdiction to hear. "[I]f a judicial officer exceeds his authority in a type of case that he normally has jurisdiction to hear, the officer has not acted in the clear absence of all jurisdiction." Sevier, 742 F.2d at 271. We conclude that the district court properly granted summary judgment in favor of defendants on the ground of judicial immunity.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

(Filed on February 27, 1985)

Robert H. Teeple, etc.	Civil Action
Plaintiff	Number C 85-5090
vs	ORDER
Honorable Chief Justice John T. Patton, etc., et al.	
Defendants	

The court has filed its memorandum and order granting defendants John T. Patton and Saul G. Stillman's motion to dismiss. Therefore, IT IS ORDERED that the complaint as to defendants, John T. Patton and Saul G. Stillman, judges of the Ohio Court of Appeals for the Eighth District, is hereby dismissed, with prejudice, at plaintiff's costs.

/s/ A Aldrich
ANN ALDRICH, U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Filed on February 27, 1985)

ROBERT H. TEEPLE (and all other similarly situated individuals)	)	Civil Action No. C83-5090
Plaintiff	)	
vs	)	MEMORANDUM AND ORDER
HON. JOHN T. PATTON, et al.	)	
Defendants	)	

In a Memorandum and Order of March 15, 1984, this Court dismissed one count of Robert Teeple's three-count complaint and determined that it was required to abstain from hearing the remainder of the case pending resolution of state court proceedings. Defendants John T. Patton and Saul G. Stillman, judges of the Ohio Court of Appeals for the Eighth District, request renewed consideration of their motion to dismiss all claims against them. Treating the motion to dismiss as one for summary judgment, Fed. R. Civ. P.

12(b), the motion is granted and the claims against Stillman and Patton are dismissed.

I.

The factual summary in this Court's previous opinion stated in part:

> All counts of the complaint deal with the Ohio statutory scheme regulating the licensing of real estate sales and sellers found in Ohio Rev. Code §4735. It is impermissible to act as a real estate broker or salesmen without a license. §4735.02. Under §4735.01(A), real estate brokers are the individuals or corporate entities who conduct real estate transactions; they employ real estate salesmen, like class plaintiff Robert Teeple, "to do or deal in any acts or transactions set out or comprehended by the definition of real estate broker..." §4735.01(B). To obtain licenses, a prospective real estate salesman must furnish to the superintendent of real estate certain information, including "the recommendation of the real estate broker with whom he is associated or with whom he intends to be associated." §4735.09.
>
> The salesman's license is sent to the broker, who retains it. "[I]mmediately upon the termination of the association of a real estate salesman with the broker, the broker shall return the salesman's license to the superintendent of real estate for cancellation." §4735.13(B). The broker is required to give notice to the salesman that the license has been cancelled. In addition, the superintendent of real estate ("Superintendent") may inves-

tigate the conduct of any licensee and suspend or revoke the licenses of brokers or dealers for committing any of the offenses listed in §4735.18.

The statutory scheme vests salesmen with no rights independent of those conferred by their broker-employers. Under §4735.21, salesmen may not

...collect any money in connection with any real estate transaction ... except in the name of and with the consent of the licensed real estate broker under whom he is licensed... [and shall not] commence or maintain any action for a commission or other compensation in connection with a real estate brokerage transaction, against any person except a person licensed as a real estate broker under whom he is licensed as a salesman at the time the cause of action arose. One of the grounds for which the superintendent may suspend or revoke a license is that the licensee has "willfully disregarded or violated any provision of Chapter 4735..." §4735.18(I).

In Count I of the complaint, Teeple states that he became a licensed real estate salesman in 1965 and learned on or about January 30, 1980 that the Superintendent had cancelled his license, apparently because his broker had returned the license to the state on May 20, 1977. Teeple filed a notice of appeal under §4735.03 with the Ohio Real Estate Commission ("Commission") on April 4, 1980, and filed additional written demands on May 7, 1980 and July 30, 1980. A hearing was held on September 17, 1980. At the hearing, Teeple alleged that his broker had violated §4735.18(EE) by failing to notify Teeple, of the license revocation.

Notwithstanding those contentions, on September 24, 1980 the Commission issued an order denying Teeple's request for reinstatement of his license.

Teeple then filed an appeal with the Court of Common Pleas for Cuyahoga County on October 3, 1980, pursuant to Ohio Rev. Code §119.12. When the record was not filed within thirty days, the court entered judgment for Teeple and ordered the Superintendent to reinstate his license. The Commission appealed; on November 19,1981 the Court of Appeals reversed and remanded. Robert H. Teeple v The Ohio Real Estate Commission, Case No. 80-018328, is still pending in the Court of Common Pleas.

Teeple argues that certain unspecified language in §119.12 barred the agency from appealing any lower court decision that was based on a factual determination that the administrative record had not been properly filed. Teeple also contends that the Commission's refusal to reissue his license violated Article I, Section 16 of the Ohio Constitution and the due process clauses of the federal and state constitutions.

Count II alleges that Article IV, Section 3 of the Ohio Constitution and Ohio Rev. Code §§2505.03 and 119.12 prevented the Court of Appeals from entertaining jurisdiction over the state's appeal from the lower court decision reinstating Teeple's license. Teeple claims that by hearing the appeal and reversing and remanding the case to the lower court, Judges John T. Patton and Saul G. Stillman violated those constitutional provisions, as well as Article I, Section 16 of the

Ohio Constitution, the Fourteenth Amendment to the Constitution, and their oaths of office as defined in Ohio Rev. Code §3.23.

Count II alleges that the real estate sales reulation statutes -- in particular the limitation on a salesman's right to commence litigation, §§4735.21 and 4735.18(I) -- constitute peonage and violate the Thirteenth Amendment's prohibition against slavery and involuntary servitude and 42 U.S.C. §1994, and also violate the First and Fourteenth Amendments.

Finally, the complaint's "Preliminary Statement" -- but not any specific count - alleges a violation of Article I, Section 10 of the United States Constitution.

II.

A.

The doctrine that judges are absolutely immune from civil suits for damages, one of the earliest products of English common law, was first recognized by the Supreme Court in 1868. Randall v. Brigham, 74 U.S. (7 Wall.) 523 (1868). Absolute immunity leaves a judicial officer "free to act upon his own convictions, without apprehension of personal consequences to himself." Stump v. Sparkman, 435 U.S. 349,355 (1978)(quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335,347 (1872)). The doctrine protects judgments from continual collateral attack and protects judges

from interference and intimidation:

> It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arose the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making, but to intimidation.

Pierson v. Ray, 386 U.S. 547,554 (1967); International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America and Its Locals 656 and 985 v. Greyhound Lines, Inc., 701 F.2d 1181, 1185 (6th Cir. 1983).

Judicial immunity is forfeited only when a judge acts in "the clear abuse of all jurisdiction over the subject-matter," Bradley v Fisher, 80 U.S. at 351; Stump v. Sparkman, 435 U.S. at 357, or engages in non-judicial or extra-judicial acts. Id. at 360. Such exceptions are read narrowly.

> ...First, a judicial officer does not act in the clear absence of all jurisdiction if he merely acts in excess of his author-

> ity.... The Supreme Court has held, for instance, that if a judicial officer exceeds his authority in a type of case that he normally has jurisdiction to hear, the officer has not acted in the clear absence of all jurisdiction....
>
> Second, the Supreme Court has specifically held that the commission of grave procedural errors, including those involving due process, does not constitute judicial action taken in the clear absence of all jurisdiction.

Sevier v. Turner, 742 F.2d 262, 271 (6th Cir. 1984) (citations omitted).

B. Fed. R. Civ. P. 56(c) governs summary judgment motions and provides:

> ...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....

In reviewing summary judgment motions, this Court must view the evidence in the light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); Hasan v. Cleve-

Trust Realty Investors, Inc., 729 F.2d 372 (6th Cir. 1984). ""[T]he party seeking summary judgment must conclusively show that there exists no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." DeCarlo v. Southland Corp., ___F.2d___, No. 83-1525, slip op. at 6 (6th Cir. Dec. 7,1984)(citing Smith v. Hudson, 600 F.2d 60,63 (6th Cir.), cert. dismissed, 444 U.S. 986 (1979) (emphasis in original).

C.

Having reviewed all portions of the pleadings and documents concerning the actions of Judges Patton and Stillman, and reading all of the facts most favorable to Teeple, this Court can find no facts demonstrating that the appellate judges were acting "in the clear absence of all jurisdiction." Even if Teeple's reading of the statutes governing appeals of Commission decisions is correct, the worst that can be

said of the judges is that they exceeded their authority in a type of case that they normally have jurisdiction to hear, or committed grave procedural errors. Under Stump v. Sparkman and Sevier v. Turner, this dispute over Ohio Statutory jurisdictional issues provides no basis for a damages action against Patton and Stillman under §1983. And, since neither declaratory nor injunctive relief is sought against the judges, Pulliam v. Allen, ___U.S.___, 104 S.ct. 1970 (1984), is of no help to the plaintiffs.

Summary judgment is granted in favor of defedants Patton and Stillman, and the complaint against them is dismissed. Pursuant to Fed. R. Civ. P. 54(b), this Court directs entry of a final judgment in favor of these two defendants. The remaining defendants shall file pleadings in accordance with this Court's direction at the February 21, 1985 status call. IT IS SO ORDERED.

/s/A Aldrich Ann Aldrich, U.S. DISTRICT JUDGE